



Rule Fact Sheet–Preliminary Adoption

April 13, 2010

Development of New Rules Concerning Emissions of Volatile Organic Compounds from Consumer and Commercial Products

LSA Document #07-351

Overview

This rulemaking proposes to add 326 IAC 8-15, consumer and commercial products (CCP), to the Article 8 volatile organic compound (VOC) rules.

Citations Affected

Adds 326 IAC 8-15.

Affected Persons

This rule applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in Indiana. Notification of this rule has been sent to interested parties identified during the course of this rulemaking.

Reasons for the Rule

The draft rule is one of a suite of measures recommended by the Lake Michigan Air Directors Consortium (LADCO) to reduce VOC emissions and Indiana's contribution to ozone formation in the upper Midwest and eastern United States. VOCs contribute to the formation of ozone and it is necessary to control VOCs in order to meet the United States Environmental Protection Agency's (U.S. EPA) 8-hour ozone National Ambient Air Quality Standard (NAAQS).

Economic Impact of the Rule

The draft rule is based on the Ozone Transport Commission (OTC) 2006 model rule. The 2006 OTC model rule contains more CCP categories than the OTC's CCP model rule that was published in 2000. The OTC is a multi-state organization created under the Clean Air Act that

is responsible for developing regional solutions to the ground level ozone problem in the Northeast and mid-Atlantic regions of the U.S. The fiscal analysis for the 2000 OTC model rule was based on the California Air Resources Board (CARB) mid-term measures and estimated a cost of approximately \$800 per ton of VOC reduced. In 2004, CARB calculated the cost effectiveness of the VOC content limits for the additional consumer product categories to be approximately \$4,800 per ton. These cost estimates assumed that all products would have to be reformulated. However, the reality of the CCP market is that it is comprised almost entirely of national and regional manufacturers.

The prevalence of existing VOC CCP rules throughout the region and United States demonstrate that much of this transition has already taken place. The VOC content limits in the OTC model rule are effective in California and nearly half of the OTC states including Connecticut, Maine, Maryland, Massachusetts, New Jersey, and Pennsylvania. Delaware and the District of Columbia are currently revising their CCP rules to add the additional categories included in the 2006 OTC model rule. Additionally, Illinois, Michigan, and Ohio have adopted CCP rules requiring that products meet the VOC limits specified in the 2006 OTC model rule.

It should be noted that the OTC model rule was written to contain standards for which a substantial number of CCPs already existed that complied with the VOC content limits for each

product category, ultimately reducing total reformulation costs. The costs outlined in CARB's analyses relied on by both OTC and LADCO in support of VOC content limits for CCPs beyond the federal rule are spread over a large portion of sales at both national and regional levels.

Because of the challenges presented by this rulemaking in quantifying the fiscal impacts for the CCP industry, IDEM cannot definitively state that the rule's impact will be less than \$500,000. Therefore, IDEM has prepared the fiscal impact statement required by IC 4-22-2-28 (c) and (e) for this rulemaking.

Benefits of the Rule

This rulemaking will assist Indiana counties in achieving and maintaining the revised 8-hour ozone NAAQS. Once Indiana has an effective CCP rule, the state will be able to receive credits for VOC reductions to assist ozone nonattainment counties in meeting the revised or proposed 8-hour ozone NAAQS.

Description of the Rulemaking Project

In 1997, U.S. EPA set the ozone National Ambient Air Quality Standard (NAAQS) at 0.08 parts per million (ppm) with an 8-hour averaging time; however, due to rounding conventions, the standard has effectively been 0.085 ppm. The standard went into effect in 2002. On March 12, 2008, U.S. EPA revised the 8-hour ozone NAAQS to a level of 0.075 ppm. This standard became effective May 27, 2008, but impacts of the new standard will not be realized until 2013, at which time, Indiana is required to submit and implement a plan for areas of nonattainment to meet the revised NAAQS. Additionally, on September 16, 2009, U.S. EPA announced it would reconsider the 2008 NAAQS for ozone. U.S. EPA will issue a final decision by August 31, 2010.

In an effort to assist neighboring states in the development of State Implementation Plans (SIPs) to comply with federal requirements, LADCO has been working with its member states to identify and recommend regional controls that would help states achieve attainment for the 8-hour ozone NAAQS. This

rulemaking regarding regulation of VOCs from CCPs is one of LADCO's recommended measures. The LADCO states are Illinois, Indiana, Michigan, Ohio, and Wisconsin.

CCPs are those items sold to retail customers for personal, household, or automotive use along with products marketed by wholesale distributors for use in commercial or institutional settings. CCPs include adhesives, sealants, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) related insecticides, and other miscellaneous products. VOC emissions from these products are the result of evaporation or propellant and organic solvents being released during use.

U.S. EPA published a federal CCP rule on September 11, 1998 (40 CFR Part 59, Subpart C). The federal rule limits the VOC content of 24 CCP categories, representing 48% of the CCP inventory nationwide, and requires all regulated products manufactured after December 10, 1998, to meet VOC content limits. U.S. EPA estimated that VOC emissions from the 24 CCP categories regulated by the federal rule were reduced by 20%. However, because over half of the CCP inventory is not regulated by the federal rule, U.S. EPA estimated VOC reductions of only 9.7% for the entire CCP inventory from uncontrolled levels.

The OTC's 2006 model rule regulates approximately 80 CCP categories and includes technologically feasible VOC content limits that are more stringent than the federal CCP rule. LADCO estimates that implementation of the OTC model rule will reduce VOC emissions by about 14.2% of the total product inventory beyond the current federal rule, or 3,154 tons VOC per year in Indiana. To date, Illinois, Ohio and Michigan have adopted versions of the OTC model rule for CCPs.

In this rulemaking Indiana is proposing to add a CCP rule to the Article 8 VOC rules at 326 IAC 8-15. The proposed rule is based on the OTC model rule and includes VOC content limits for consumer and commercial products, regulatory flexibility provisions for innovative products and alternative control plans, labeling requirements,

record keeping and reporting requirements, and test methods.

Although this rule is substantively based on the OTC model rule, Indiana has opted not to include the VOC content limits for toilet or urinal care products or the ban on para-dichlorobenzene (PDCB) in solid air fresheners and toilet or urinal care products that had published in the Second Notice of Comment Period at 326 IAC 8-15-3(a) and 326 IAC 8-15-3(k), respectively. The OTC model rule regulates toilet and urinal care products more stringently than the existing federal rule. However, both Illinois and Ohio opted to exclude the OTC model rule's VOC content limits and the ban on PDCB in toilet and urinal care products. In order for Indiana's CCP rule to remain consistent with Illinois and Ohio's effective CCP rules, Indiana removed those sections from the draft rule.

Scheduled Hearings

First Public Hearing: Tentatively scheduled for April 13, 2010, at 1:00 p.m. at the Indiana Government Center-South, 402 West Washington Street, Conference Room C, Indianapolis, Indiana.

Second Public Hearing: To be determined.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious

to:

- (A) human, plant animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new rule is consistent with federal laws, rules, guidance. However, the new rule contains VOC content limits for some consumer product categories that are not addressed by the federal rule.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Amy Smith, Rule and SIP Development Branch, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana), or asmith@idem.in.gov.